

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

November 20, 2015

RECEIVED ON:

Via Certified Mail – Return Receipt Requested
Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

NOV 23 2015
ORC
EPA Region 10
Office of the Regional Administrator

Via Certified Mail – Return Receipt Requested
Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Via First Class Mail
Administrator Dennis McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave., Ste. 900
Seattle, WA 98101

Re: *Waste Action Project v. Overlake Oil, Inc.*; W.D. Wash. Case No. 15-748JLR

Dear Honorable Civil Servants:

Please find enclosed the proposed consent decree for the above-named Clean Water Act citizen suit. The motion for entry of the consent decree has been noted to allow time for your statutory 45-day review.

Very truly yours,
s/Richard A. Smith
Richard A. Smith

c: Mike Callan (via email, w/o enclosure)

HON. JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT,)	
)	Case No. 15-00748JLR
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
OVERLAKE OIL, INC.,)	
)	
Defendant.)	
_____)	

I. STIPULATIONS

Plaintiff Waste Action Project sent a sixty-day notice of intent to sue letter to defendant Overlake Oil, Inc. ("Overlake") on or about March 11, 2015, and filed a complaint against Overlake on May 13, 2015, each of which alleged violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from Overlake's facility, located at or about 1005 8th Street, Kirkland, WA (the "Facility"), and seeking declaratory and injunctive relief, civil penalties, and attorneys' and consultant's fees and costs.

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No. 15-00748JLR

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Overlake and Waste Action Project (the "Parties") agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that settlement of this matter will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Waste Action Project and Overlake stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding the claims and allegations set forth in Waste Action Project's complaint and sixty-day notice of intent to sue letter.

II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing stipulations of the parties. Having considered the stipulations and the terms and conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreements set forth below.
3. This Consent Decree applies to and binds the parties and their successors and assigns.
4. This Consent Decree applies to Overlake's operation and oversight of the Facility that is subject to National Pollutant Discharge Elimination System Permit No. WAR002259 (the "NPDES Permit"). This Consent Decree has no application with regard to any issue at any other location where Overlake may conduct operations or to any successor or assignee that is not subject to such NPDES Permit.

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5. This Consent Decree is a full and complete settlement and release of all claims set forth in the complaint, the sixty-day notice of intent to sue letter, and all other claims arising from the facts alleged in the complaint and the sixty-day notice of intent to sue letter, known or unknown, contingent or otherwise, relating to any acts or omissions, existing as of the date of entry of this Consent Decree, that could be asserted against Overlake or its employees, agents, successors, and assigns, under the Clean Water Act that arise from operations at the Facility. These claims are released and dismissed with prejudice.

6. This Consent Decree is a settlement of disputed facts and law. It is not an admission or adjudication regarding any allegations by Waste Action Project in this case or of any fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or misconduct on the part of Overlake.

7. Concurrent with Waste Action Project's filing of the notice letter and initiation of this lawsuit, Overlake, with the assistance of a stormwater consultant, updated its Stormwater Pollution Prevention Plan ("SWPPP"), and implemented new best management practices ("BMPs") including a stormwater treatment system and storm drain facilities.

8. Overlake agrees to the following terms and conditions in full and complete satisfaction of all the claims covered by this Consent Decree:

a. Overlake will comply fully with all conditions of its NPDES Permit No. WAR002259, and any successor, modified, or replacement permit for the

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Facility, including but not limited to proper operation and maintenance of its new treatment system;

b. Upon entry of this decree, Overlake will sample its stormwater treatment system discharge from the monitoring point used for permit compliance during regular business hours at least once per month in each month with a discharge until it has collected six stormwater samples. Overlake will have these samples analyzed for pollutant concentrations in accordance with Condition S5 of the NPDES Permit and will submit the results to the Department of Ecology to the extent required by law;

c. For three years following entry of this Consent Decree, Overlake will, on a quarterly basis, permit access through the Washington State Department of Ecology water quality website, PARIS to all documents transmitted to or received from the Department of Ecology concerning compliance with the NPDES Permit to Waste Action Project, including but not limited to discharge monitoring reports and the results of samples collected pursuant to sub-paragraphs (8)(b) of this Consent Decree;

9. Within fifteen (15) days of entry of this Consent Decree, Overlake will pay the sum of \$16,500.00 to the Adopt A Stream Foundation as described in **Attachment A** of this Consent Decree for the conservation work in WRIA 08-0056 described in **Attachment A**. Payment will be made to the order of Adopt A Stream Foundation, 600 – 128th Street SE, Everett, WA 98208-6353. Payment will include the following reference in a cover letter or on the check: "Consent Decree, Waste Action Project v. Overlake Oil, Inc." Overlake agrees to

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provide a copy of the check and cover letter, if any, to Waste Action Project and its counsel at the addresses identified in Paragraph 18, below.

10. Within fifteen (15) days of entry of this Consent Decree, Overlake will pay Waste Action Project \$12,000.00 as full and final reimbursement for all litigation fees, expenses, and costs (including reasonable attorneys' and consultant's fees) incurred in this matter by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard Smith. Overlake's payment shall be in full and complete satisfaction of any claims that Waste Action Project has or may have, either legal or equitable, and of any kind or nature whatsoever, for fees (including attorneys' and consultant's fees), expenses, and costs incurred in this matter.

11. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes outside the reasonable control of Overlake which delays or prevents the performance of any obligation required by this Consent Decree that cannot be cured by due diligence. Delay in performance or failure to perform any requirement of this Consent Decree caused by a Force Majeure event is not a failure to comply with the terms of this Consent Decree, provided that Overlake notifies Waste Action Project of the event, the steps that Overlake will take to perform the obligation, the projected time that will be needed to complete performance, and the measures that have been taken or will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in performance of the obligation.

Overlake will notify Waste Action Project of the occurrence of a Force Majeure event as soon as reasonably possible but, in any case, no later than fifteen (15) business days after the

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occurrence of the event. In such event, the time for performance of the obligation and to cure any deficiencies will be extended for a reasonable period of time following the Force Majeure event without liability.

By way of example and not limitation, Force Majeure events include:

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods, drought;
- c. Actions or inactions of third parties over which Overlake has no control;
- d. Restraint by court order or order of public authority;
- e. Strikes;
- f. Litigation, arbitration, or mediation that causes delay.
- g. Unanticipated stormwater treatment system or equipment failure caused by reasons other than failure to operate or maintain such system in accordance with its operations and maintenance manual or other recommendation by Overlake's vendor or qualified consultant;

12. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this paragraph shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Court will retain jurisdiction over this matter and allow this case to be reopened without filing fee for the purpose of enabling the parties to apply to the Court for any further order that may be necessary to construe, carry out,

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enforce compliance, or resolve any substantive dispute regarding the terms or conditions of this Consent Decree until termination of the Consent Decree per paragraph 14.

In the event of a substantive dispute regarding interpretation of, implementation of, or compliance with, this Consent Decree, the parties will work to resolve the dispute as follows:

a. Written Notice: The parties must first attempt to resolve the dispute by serving a written notice that identifies the alleged dispute and requested resolution.

b. In-Person Meeting: Upon the request of either party, an in-person meeting between the parties must take place within thirty (30) days of service of the written notice or as soon as reasonably possible. At the in-person meeting, the parties will make a good faith attempt to resolve the dispute.

c. Court Action: If no resolution is reached within thirty (30) days from the date of the in-person meeting, or sixty (60) days from service of the written notice, whichever is earlier, a party may file a motion with the Court seeking an order to resolve the dispute.

13. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the filing of this Consent Decree by the parties, Waste Action Project will serve copies of it upon the Administrator of the U.S. EPA and the U.S. Attorney General, with copy to Overlake.

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14. This Consent Decree will take effect upon entry by this Court. It terminates three year after entry of this Consent Decree.

15. Both parties have participated in drafting this Consent Decree.

16. This Consent Decree may be modified only upon the approval of the Court.

17. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of either party. The parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of this Consent Decree.

18. Notifications required by this Consent Decree must be in writing. The sending party may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other communication regarding this decree to be valid, it must be delivered to the receiving party at the one or more addresses listed below or to any other address designated by the receiving party in a notice in accordance with this paragraph 18;

if to Waste Action Project:

Greg Wingard
Waste Action Project
P.O. Box 4832
Seattle, WA 98194
gwingard@earthlink.net

and to:

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Richard A. Smith
Smith & Lowney, PLLC
2317 E. John St.
Seattle, WA 98112
rasmithwa@igc.org

if to Overlake:

Jim Jessen
Overlake Oil, Inc.
1021 8th Street
Kirkland, WA 98033
jimj@overlakeoil.com

and to:

Michael T. Callan
Peterson Russell Kelly PLLC
10900 NE 4th St Suite 1850
Bellevue, WA 98027
mcallan@prklaw.com

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided via e-mail, upon receipt of a response (other than an automatic response) by the party providing notice or other communication regarding this Consent Decree.

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DATED this _____ day of _____ 2015,

HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

APPROVED FOR ENTRY

SMITH & LOWNEY PLLC

PETERSON RUSSELL KELLY PLLC


By: /s/Richard A. Smith

By: /s/Michael T. Callan

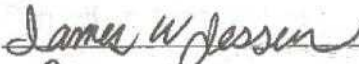
Richard A. Smith, WSBA # 21788
Attorneys for Plaintiff
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1850 Skyline Tower
10900 NE Fourth St.
Bellevue WA 98004
(425) 462-4700
Fax: (425) 451-0714
MCALLAN@PRKLAW.COM

WASTE ACTION PROJECT

Signature: 
Title: Executive Director
Dated: Nov. 18, 2015

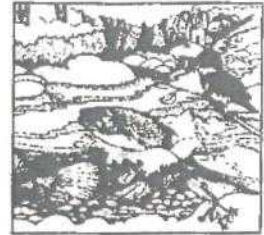
OVERLAKE OIL, INC

Signature: 
Title: PRESIDENT
Dated: NOV. 20, 2015

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2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
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Adopt A Stream Foundation



Northwest Stream Center
600-128th Street SE
Everett, WA 98208-6353
tel (425) 316-8592, 771-6671
fax (425) 338-1423
email aasf@streamkeeper.org
web www.streamkeeper.org

November 12, 2015
Mr. Greg Wingard, Director
Waste Action Project
P.O. Box 4832
Seattle WA 98194-0832

RE: Overlake Oil Settlement Agreement

Dear Mr. Wingard,

The Adopt A Stream Foundation (AASF) recently completed a survey of Little Creek also referred to as Cat Whisker's Creek in the cities of Briar (upstream) and Kenmore (downstream) WA. The Washington State *Water Resource Inventory Area* identification number for this stream is: WRIA 08-0056.

During that survey, numerous manmade barriers to salmon migration, primarily undersized or improperly placed culverts, were located. In addition, numerous opportunities to reduce water pollution were discovered. Settlement agreement funds of \$16,500 provided to AASF will be used exclusively to carry out actions below on private properties within the WRIA 08-0056 watershed.

- Replace culverts that are barriers to fish migration with fish passable culverts.
- Design and construct rain gardens to receive stormwater runoff from rooftops and other impervious surfaces so that runoff will help recharge the groundwater system rather than flow to a storm drain system leading to the stream system.
- Convert lawns to native plant landscapes that do not require fertilizers, pesticides, or herbicides.

In addition, AASF will attempt to leverage the settlement agreement funds to further improve water quality and fish habitat in WRIA 08-0056. AASF will inform both the cities of Briar and Kenmore of our efforts to reduce water pollution and improve fish habitat on private property and challenge those jurisdictions to take similar actions including removing the barriers to salmon migration that are their responsibility.

Upon completion of this project, AASF will provide a complete report to both parties on actions funded by this settlement agreement.

Sincerely

Thomas B. Murdoch
Executive Director

Adopt A Stream Foundation

Appendix: Overlake Oil Settlement Project Element Cost Projections

Typical costs for a new fish passable culvert that can be installed under a driveway are between \$2,500 and \$5,000. Additional costs include engineering/design/permits, heavy equipment rental, gravel, and driveway surface replacement. Total removal/replacement costs range from \$5,000 to \$15,000 per driveway.

Typical costs to design and construct a fully functioning rain garden are between \$2,000 and \$3,000. Costs include design, material, equipment and labor.

Cost to convert lawns to native plant landscape vary considerable and depend largely on the negotiations with participating landowners on the landscape design.